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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement* submitted by the Palestinian Centre for Human Rights (PCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 January 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Palestinian Centre for Human Rights (PCHR) and LAW, the Palestinian Society for the Protection of Human Rights and the Environment (LAW) note with grave concern the continuing prevalence of torture and ill treatment of Palestinian detainees in Israeli jails and detention centres, inside Israel and in the Occupied Palestinian Territories (OPTs). PCHR and LAW wish to provide the Commission on Human Rights with information regarding Israel's continued violation of its obligations under international human rights and humanitarian law, in particular the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), to which Israel is a State party, to prevent torture and cruel, inhuman or degrading treatment or punishment (ill treatment), to investigate allegations of such treatment and to bring to justice those responsible for the perpetration of violations.

PCHR and LAW asserts that members of the Israeli Security Agency (formerly known as the General Security Services or GSS) and other Israeli security institutions continue to violate international legal standards on the prohibition of torture and other forms of ill treatment in their treatment or punishment of Palestinians in or from the OPTs. The use of administrative detention, in which Palestinians have been held without charge or trial, has continued and even increased in the last year. The use of incommunicado detention has also increased. The pattern of torture and ill treatment of Palestinians in Israeli detention facilities is endemic. Palestinians have continued to be subjected to interrogations methods which constitute torture or ill treatment. Members of the ISA and other institutions enjoy impunity for torture and ill treatment. Victims are routinely denied effective and adequate redress in accordance with international standards.

As the United Nations Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Committee) stated in November 2001[1], Israel has yet to incorporate a prohibition on torture as defined under the Convention into domestic legislation. The Committee further reiterated the concerns of Palestinian, Israeli and international human rights organizations that Israel continues to violate international standards on the prohibition on torture and ill treatment, with particular regard to its use of physical and psychological pressure during interrogation, and administrative and incommunicado detention. The Committee also found that the policies of closure and house demolition may, in certain circumstances, constitute cruel, inhuman or degrading treatment or punishment in violation of Article 16 of the Convention.

Torture and Ill Treatment in Detention

There has been a serious increase in the number of Palestinian arrested by members of Israeli security institutions and consequently human rights organizations, including PCHR and LAW, have received increasing numbers of complaints of torture and ill treatment in detention, including of minors. According to PCHRs records more than 1500 Palestinians were arrested and detained by the Israeli occupation forces and other security services in 2001 and more than 3000 Palestinians are currently in detention in institutions inside Israel, including 244 under the age of 18[2]. Many prisoners have been, or continue to be, subjected to methods of interrogations which amount to torture or ill treatment, including, but not limited to, painful shackling; shabeh; sleep deprivation; forcing the detainee to squat for long periods; loud music or screaming noises; beatings, slapping and kicking; shaking; threats of physical and sexual

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1 Conclusions and Recommendations of the Committee Against Torture: Israel. 23/11/2001. CAT/C/XXVII/Concl.5.

2 Figures provided by the Ministry of Prisoners Affairs of the Palestinian Authority.

violence; insults. Other treatment inside detention centres has included exposure to extreme temperatures; prolonged or continuous exposure to artificial light; denial of timely and adequate medical care; tear gas, sound bombs; detention in inhuman and degrading conditions; denial of basic rights including freedom of expression and free worship. PCHR and LAW are particularly concerned about the treatment of Palestinian children upon arrest and during interrogation and detention. According to Defence for Children International, Palestine Section, approximately 650 Palestinian children were arrested by the Israeli authorities in 2001 and of those, approximately 95% were subjected to some form of torture and ill treatment, including psychological methods, upon arrest, during transportation to detention centres, interrogation or detention.

Incommunicado Detention

Palestinians have continued to be subjected to incommunicado detention in the last year. The denial of rights to legal counsel and family visits facilitates torture and other ill treatment. The Israeli Supreme Court has consistently refused requests for access to legal counsel submitted by PCHR, LAW and other human rights organizations and has also refused to examine the legal basis for permitting incommunicado detention. Throughout this Intifada, the Israeli authorities have imposed unacceptable conditions and restrictions on the ICRC family visitation programme, leading to regular suspensions.

Administrative detention

In November 2001, the Committee also noted Israel's continued use of administrative detention, and expressed again its concerns that the practice does not conform with article 16 of the Convention Against Torture. PCHR is increasingly concerned by the continued detention of Palestinians without charge or trial for long periods without recourse to even the most basic requirements of judicial procedure. Administrative detention orders are generally based on classified information to which the detainees lawyer has no access. They are issued by Israeli military commanders in the OPTs and can be renewed an indefinite number of times.

Transfer of Prisoners

The transfer of Palestinian prisoners to detention facilities inside Israel further facilitates the prevalence of incommunicado detention and thus the use of methods of interrogation which may amount to torture or ill treatment and is of itself a breach of international humanitarian law; the transfer of prisoners outside of occupied territory is a violation of Articles 49 and 76 of the *Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949* (the Fourth Geneva Convention). Palestinians arrested by the Israeli occupation forces or other security institutions are usually initially detained at facilities within settlements or military posts in the OPTs. If the detainee is considered to have committed a more serious offence or requires further investigation, he is then transferred to a facility inside Israel. Often, prisoners are then moved to other prisons inside Israel, introducing greater psychological pressure and facilitating the use of collaborators. Furthermore, in light of the heightened closure policy imposed on the OPTs since the beginning of this Intifada, preventing movement of Palestinians between the OPTs and Israel and even within the OPTs, in transferring prisoners outside of the OPTs the Israeli security services are effectively ensuring that they are held in *de facto* incommunicado detention, without access to family and, in some cases even legal counsel. Family visits previously organized by the ICRC have been regularly suspended as mentioned above. PCHR has also received several complaints of ill treatment of relatives by Israeli officials in detention centres during visits. These complaints have focused on physical searches, particularly of women and children, conducted in a manner which

violates human dignity. PCHRs lawyers, like other lawyers from the OPTs, have been denied access to clients held in detention in Israel since 1996. PCHR has consequently been forced to instruct Israeli lawyers to act on its behalf in conducting client visits and representing clients in court. The prohibitive costs of Israeli legal fees creates serious financial burden on individuals, their families and on institutions like PCHR which provide legal aid.

Torture and Ill Treatment outside Interrogation

Increasingly since the beginning of this Intifada, there have been cases of Palestinians beaten or otherwise subjected to ill treatment immediately upon arrest. There have also been increasing reports of ill treatment of Palestinians at checkpoints by Israeli soldiers.

Impunity for Torturers

As PCHR, LAW and other human rights organizations have repeatedly stated, members of the ISA, the Israeli occupation forces and other security institutions have continued to enjoy impunity for acts of torture and ill treatment. In providing that initial investigations into complaints by detainees are conducted by a member of the ISA, Israel has failed to provide an effective complaints procedure for Palestinian prisoners. Those responsible for torture or ill treatment are rarely investigated fully, and PCHR is not aware that any member of the ISA, or of its former incarnation, the GSS, has been successfully prosecuted for an act of torture or ill treatment in response to any complaint submitted by, or on behalf of a Palestinian prisoner. Indeed, PCHR and LAW have submitted many complaints of torture and, or, ill treatment on behalf of Palestinian prisoners detained inside Israel. In the majority of cases no thorough and impartial investigation has been conducted, if an investigation is initiated at all. No complaint submitted by PCHR or LAW has resulted in a prosecution of a member of the Israeli Security Agency (ISA).

Failure to Compensate and Rehabilitate

Israel routinely violates its obligations to effectively investigate complaints of torture and ill treatment, prosecute those responsible in accordance with international standards, including with respect to appropriate punishments, and provide redress, including adequate compensation, for Palestinian victims of torture and ill treatment. PCHR has submitted a number of complaints to the Israeli High Court of Justice regarding the use, or feared use of methods of interrogation of Palestinian detainees which may constitute torture or ill treatment, including requests for investigations. PCHR does not consider that the majority of those prisoners from the OPTs who have been subjected to torture or ill treatment in detention in violation of Israel's obligations under international law have received effective and adequate compensation or redress, in accordance with international standards.

PCHR and LAW conclude that Israel continues to practice methods of interrogation and other policies which constitute torture or other forms of ill treatment as defined in international law and continues to violate its obligations to provide redress, including full and proper investigations, prosecutions in accordance with international standards, including with respect to appropriate punishment, and effective and adequate compensation.

PCHR and LAW therefore call upon:

The Government of Israel,

- To immediately implement the provisions of the Convention Against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment to which they are a state party.

- To incorporate fully the provisions of the Convention Against Torture into domestic legislation, including a clear prohibition on torture and ill treatment as defined under the Convention.

- To fulfill its legal obligations under other international laws, including the Fourth Geneva Convention, to prohibit torture and ill treatment, to immediately halt the illegal transfer of prisoners outside of the OPTs.

- To end the culture of impunity which members of the Israeli Security Agency, the Israeli occupation forces and other security institutions have consistently enjoyed for acts of torture and ill treatment and to prosecute those responsible for the perpetration of torture and ill treatment.

- To provide effective means of adequate compensation for victims of torture and ill treatment.

- To revise military and civilian laws and policies to ensure that all detainees are ensured prompt access to lawyers and families in accordance with international standards, without discrimination.

- To cease the practices of administrative and incommunicado detention.

The UN Commission on Human Rights and the UN General Assembly,

- To monitor Israel's fulfillment of its obligations as a state party to the Convention Against Torture to prohibit and prevent torture and ill treatment and to fully investigate complaints of torture and ill treatment and to provide effective and adequate redress for victims of torture and ill treatment.

The High Contracting Parties to the Fourth Geneva Convention,

- To recognize their obligations under Article 1 to "ensure respect for the Convention in all circumstances" and thereby to ensure that Israel applies *de jure* the Fourth Geneva Convention in the OPTs, including the prohibitions on torture and ill treatment of protected persons, and the transfer of prisoners outside of the OPTs.

- To recognize their obligations under Article 146 to search for and prosecute those responsible for grave breaches of the Convention as defined in Article 147, in conformity with the universal jurisdiction over grave breaches, including torture and inhuman treatment, recognized by the Convention.